IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3121 OF 2007

Shivraj Shashikant Kadne. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Shekhar Ingawale for the applicant.

Ms.S.D.Shinde, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 23rd October 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for State.

2. The applicant is seeking bail in connection with C.R.No.47/2007 registered with the Shahupuri Police Station, district- Kolhapur for the offence punishable under section 302 read with section 34 of the Indian Penal Code.

3. The applicant has moved this application after suffering an adverse order dated 9th July, 2007 at the

hands of the Ad-hoc Additional Sessions Judge-3 Kolhapur in Criminal Misc. Application No.190/2007, whereby application seeking bail came to rejected.

4. The learned Sessions Judge while refusing to grant bail to the applicant has observed as under:

> "After hearing arguments of both sides counsel and on going through police papers it is pertinent to note that perusal of the police papers reveal that on account of business rivalry between both these accused on one hand and he deceased on the other hand, these accused had on he date of incident i.e. 22/02/2007 gone to the still of the deceased and initially quarreled with him and then accused No.2 caught hold of the deceased while accused No.1 stabbed him repeatedly with the knife. The said incident had not only taken place during the broad daylight but also in the heart of the city. Thus it reveals the nature and attitude of the accused and the gravity of the offence also. Therefore when there is strong prima-facie case made out against accused, they certainly do not deserve to be released on bail at all."

5. Having heard rival parties, no case is made out by the applicant to take contrary view contrary to the view taken by the Sessions Court rejecting bail. The act of the applicant, who caught hold of the deceased, permitted accused No.1 to stab him repeatedly with knife cannot be said to be an act which should be overlooked by the Court while granting bail. Needless to mention that had he not caught the deceased, the deceased could have saved himself either by retaliating or by avoiding assault and/or act of

stab in which the accused No.1 has indulged. Thus, looking to the gravity of the offence alleged and the positive act of the applicant surfaced in the F.I.R., applicant is not entitled to bail.

6. In the result, application is rejected.

JUDGE